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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.272
20 November 1996

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE 272nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 1996, at 10.30 a.m.

Chairman: Mr. DIPANDA MOUELLE

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GE.96-19058 (E)

The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Algeria (CAT/C/25/Add.8)

1. At the invitation of the Chairman, Mr. Dembri, Mr. Hamed-Abdelouahab, Mr. Hassaine and Mr. Soualem (Algeria) took places at the Committee table.

2. Mr. DEMBRI (Algeria) said that his country had begun a process of transition to political pluralism and a market economy prior to the submission of its initial report in 1991. The democratic rights and freedoms that formed the basis of that transition had been enshrined in the new Constitution adopted in 1989. Chapter IV, (arts. 31 to 34) explicitly established State responsibility for ensuring the inviolability of the individual and for prohibiting all forms of physical and moral violence. All international treaties to which Algeria was a party took precedence over domestic legislation and could be invoked by individuals before the Algerian courts, a principle reaffirmed by the Constitutional Council. The constitutional amendments on which the Algerian people would be voting on 28 November 1996 strengthened the existing provisions by guaranteeing protection for the dignity as well as the rights and freedoms of the individual.

3. The transformation of Algerian society mapped out in the 1989 Constitution had been impeded from the outset by social and economic difficulties and religious extremism with terrorist dimensions. Such extremism was alien to the values of Algerian civilization and stemmed largely from the era of East-West conflict when young Muslims of different nationalities had been recruited to defend Afghanistan against Soviet hegemony. Following demobilization, they had viewed democratic values as equally suspect and ungodly ideas.

4. Undeterred, the Algerian State had pressed ahead with its policy of democratization, fighting terrorist crime while continuing to abide by the law and its international obligations. The law on terrorism and subversion which had set up special courts had been repealed. An independent National Human Rights Observatory, established in 1992, had unrestricted freedom of action in the promotion and protection of human rights, as evidenced by a directive issued by the Head of State in January 1995 enjoining all bodies concerned to cooperate fully with the Observatory. No death sentence had been carried out since September 1993. A Mediator of the Republic (Ombudsman) had been appointed in May 1995. The last administrative detention centre had been closed in November 1995 and its inmates reintegrated into society. A clemency law had been enacted with a view to reducing the sentences of repentant terrorists and facilitating their return to a normal life.

5. The enjoyment of fundamental rights and freedoms was no longer restricted by the provisions of the state of emergency. A year after the presidential elections, which had been overseen by international observers, two months after the national conference and on the eve of parliamentary and local elections, the electorate would be asked to vote on 28 November 1996 on

the following constitutional amendments: limitation of the President's period in office to two terms; establishment of a High Court of Justice to try the President for abuse of office; establishment of a Council of State alongside the Supreme Court to consolidate and enhance the independence of the Judiciary and to protect the general public against abuse by the authorities; appointment of an upper chamber, the "Conseil de la Nation"; broadening of the Islamic Council and the Constitutional Council.

6. Algeria had accepted the optional machinery under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was actively involved in the proceedings of the Working Group on the draft optional protocol to the Convention.

7. Despite the criminal and barbaric acts perpetrated by the enemies of democracy, freedom and progress, the public authorities in his country were determined to continue working for the triumph of pluralist democracy, the rule of law and human rights.

8. Mr. CAMARA (Country Rapporteur) said he was gratified that Algeria had complied with its obligations under the Convention by submitting a report and conducting a dialogue with the Committee despite the tragic circumstances prevailing in the country.

9. He welcomed the criminalization of torture in the Algerian Criminal Code. Referring to article 12 of the Convention, which required a prompt and impartial investigation to be carried out wherever there was reasonable ground to believe that an act of torture had been committed, he asked how the term "reasonable ground" was interpreted in Algerian legislation, jurisprudence and practice.

10. Referring to paragraph 5 of the report (CAT/C/25/Add.8), he asked whether action by the Department of Public Prosecution was mandatory or optional when information was received under article 32 of the Code of Criminal Procedure.

11. Article 72 of the Code authorized an individual who claimed to have suffered injury as a result of an offence to bring a criminal indemnity action before the competent judge. Did a public right of action exist where the Department of Public Prosecution failed to take prompt action or where other grounds existed? Would the State party agree that compliance with articles 13 and 14 of the Convention called for more substantial action than allowing the victim to bring a criminal indemnity action? And, if so, what measures had been or would be taken to that end?

12. When would the amendments to the Code of Criminal Procedure mentioned in paragraph 13 of the report take effect? What sanctions would be applied in the event of non-compliance with the new protective measures, particularly those concerning police custody and pre-trial detention?

13. Had Algeria issued the communication provided for under article 4, paragraph 3, of the International Covenant on Civil and Political Rights to the effect that its derogation from the Covenant under the state of emergency had been terminated?

14. Paragraph 23 of the report stated that a committal order could be appealed to the wali of the detainee's place of residence and the "Regional Appeals Council". Were the bodies concerned administrative or judicial? In that connection, he pointed out that Algeria had not derogated from article 9 of the International Covenant on Civil and Political Rights concerning the right to liberty and security of person. He drew attention to the Siracusa principles on the limitation and derogation provisions in the Covenant (E/CN.4/1985/4), which defined the term public order as "the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order." According to the principles, State organs or agents responsible for the maintenance of public order must be subject to controls in the exercise of their power through the parliament, courts or other competent independent bodies.

15. A report by Amnesty International dated November 1996 contained allegations of massive human rights violations, particularly acts of torture. Rachid Mesli, a human rights lawyer, had been abducted in July 1996. Lawyers who had seen him subsequently reported bruises on his right eye and hand and stated that he looked in poor physical condition. The National Human Rights Organization had confirmed on 11 August 1996 that Rachid Mesli had been arrested by the security forces.

16. Representatives of Amnesty International who had visited Algeria in August 1994 had been unable to obtain permission from the prison authorities or from the examining magistrate for a private meeting in El-Harrache prison with Noureddine Lamdjadani, a medical doctor arrested on 17 May 1994, and Said Moulay, a mathematics teacher arrested on 19 June 1994. Both men had allegedly been tortured by the "chiffon" method. Ali Zouita, another lawyer, had allegedly been detained without trial since February 1993 although the two charges against him had been dropped. Amnesty International claimed that no independent Algerian or international human rights organization had to date been authorized to visit prisoners.

17. According to Amnesty International, neither the Convention nor the International Covenant on Civil and Political Rights, both of which had been ratified by Algeria in 1989, had been published in the Journal officiel, although the Supreme Court had ruled on 20 August 1989 that international treaties only became an integral part of domestic law following such publication. What was the current situation with regard to the two treaties?

18. Ms. ILIOPOULOS-STRANGAS (Alternate Country Rapporteur) said that the Committee was fully aware of the difficulties facing the Algerian Government and looked forward to a frank dialogue and cooperation. It was regrettable that representatives of the armed groups could not appear before the Committee to account for their brutal violations of human rights.

19. Turning to paragraph 5 of the report, she said that article 11 bis of Algeria's Criminal Code did not correspond to important provisions of the Convention and, particularly, article 1 containing the definition of torture.

She drew attention to a discrepancy between the Government's statement on the time-limit for persons held in custody and information received from other sources. She therefore requested confirmation of the period allowed for pre-trial detention.

20. She asked whether the amendment to the Criminal Code incorporating previously exceptional provisions on terrorism had become permanent. She would like to have further information on the independence of magistrates. How was their independence guaranteed? Who was responsible for their appointment? Were they appointed for life and were they required to pass an examination in order to qualify for their positions? Referring to paragraph 49, she asked whether the separation of powers was enshrined in the Constitution and whether the legal profession in Algeria could be described as free and independent. The Committee was interested in knowing whether there was a time-limit on the state of emergency which had originally been proclaimed in February 1992.

21. With regard to paragraphs 21 and 22 of the report on persons authorized to issue a committal order, she asked whether the appointment of such persons was unlimited and unconditional, and whether the committal of persons to custody was subject to judicial monitoring. According to paragraph 33, persons benefiting from clemency measures were entitled to request a medical examination. She wondered whether other detainees were also entitled to request medical examinations. Were persons held in custody or in solitary confinement allowed to send information to their families and lawyers? She invited the delegation to comment on the appointment and independence of the members of the National Human Rights Observatory.

22. Questions had arisen regarding the reliability of facts presented by the Government in relation to a mutiny and massacre at Sekadji prison in February 1995, in which 96 prisoners and 1 member of the security forces had been killed. According to NGO reports, no independent investigation had subsequently been carried out and NGO representatives had been refused permission to visit inmates. She asked the delegation to confirm those reports and to explain why the Algerian Government had failed to provide further informationon on the events in question.

23. It was regrettable that torture, which had virtually disappeared from Algeria between 1989 and 1991, had re-emerged and had seemingly become institutionalized. Reports had reached the Committee that complaints of torture had been largely ignored. She asked the delegation to clarify the situation with regard to the investigation of complaints against the security forces, notably the failure to carry out medical examinations of victims of cruelty, and to say whether complaints had been brought before the courts.

24. She noted that press censorship had increased, and wondered whether the Government's censorship measures were appropriate in view of the fact that journalists had been targeted by terrorist groups. While the Committee understood the trying circumstances under which the Algerian Government functioned, it wished to encourage the State party to reflect on its policies and on its approach to measures such as censorship. International experience had shown that a Government could only defend its democratic tradition by adhering to the letter of the law.

25. In conclusion, she asked the delegation to provide information on the disappearance in dubious circumstances of Mr. Fouad Bouchelaghem, Mr. Alladoux Ziou, Mr. Mohame Ziou, Mr. Mustapha Benkara and Mr. Noureddine Lamdjadani.

26. Mr. GONZALEZ POBLETE inquired about the nature of the measures adopted under the state of emergency. In connection with pre-trial detention, he asked for details concerning the choice of the place of detention and work done by detainees, and inquired whether any periodic controls existed. What measures were taken to ensure adequate conditions for long-term detainees? Were their families informed of their whereabouts? And did the detainees have adequate sustenance or a means of earning a livelihood?

27. He requested information on expulsion, and specifically on the choice of destination of the expelled person, the possibility for him to make arrangements prior to expulsion and the provision of travel documents. He wondered whether the Government of Algeria coordinated expulsions with other countries or international bodies which had the capacity to receive exiles and to meet their most urgent needs.

28. Mr. BURNS said that Algeria's failure to publicize the ratification of the Convention had been disappointing because it meant that, in cases where Algeria's domestic law and the provisions of the Convention were incompatible, the standards of the Convention did not prevail. Since Algeria had not submitted a reservation on article 20 and had, in fact, made a declaration in favour of article 2, the Committee had jurisdiction to receive individual communications from Algerians even though the Convention had not been formally incorporated into domestic law.

29. If the numerous allegations of extrajudicial disappearances and deaths attributed to the security forces and the government-supported militia were true, would those offences not constitute cruel or inhuman treatment or punishment, and therefore be in breach of article 16? He asked the delegation how Algeria could be regarded as adhering to the Convention when it had not incorporated it into domestic law, which itself contained provisions that violated the Convention.

30. Mr. REGMI said Amnesty International had reported that trials in "special courts", mentioned in paragraph 27 of the report, had been unfair at all stages in their proceedings and had violated the most basic international standards. Article 2, paragraph 2, and article 13 of the Convention explicitly stated that no exceptional circumstances could be invoked as justification of torture and that persons claiming to be victims of torture had the right to a prompt and impartial examination of their case by the competent authorities.

31. He requested an explanation of the purpose and efficacy of the National Human Rights Observatory. Was it endowed with the power to prevent acts of torture and to prosecute suspects, and did it compensate victims?

32. Turning to the Algerian legal system, he asked whether there were provisions for judicial review or habeas corpus in instances of illegal detention. What steps had the Government taken to prevent the acts of torture detailed in the report of the United Nations Special Rapporteur on questions relating to torture?

33. Mr. YAKOVLEV observed that terrorism in Algeria had started after the cancellation of the 1991 elections and asked whether there were plans for new elections.

34. The CHAIRMAN, noting that the members of the Committee had no further questions, said that, in accordance with the Committee's general guidelines, more details on how articles 1 to 16 of the Convention were implemented in Algeria should have been supplied.

35. He announced that the Committee would welcome contributions, however modest, to the United Nations Voluntary Fund for Victims of Torture.

36. Mr. DEMBRI (Algeria), replying to Mr. Yakovlev's question, said that local and general elections were planned for the first half of 1997. The violence in Algeria had started well before the cancellation of the 1991 elections. As a result of local and general elections being held in the wrong order in 1989, a Parliament elected on the basis of the 1976 Constitution, which had sworn to defend the single party and socialism, had had to pass laws in accordance with the Constitution of 1989, which had introduced a multi-party system. That contradiction had led to tensions and violence. He stressed, however, that the violence had been caused not by the cancelled elections but by terrorist attacks by young combatants returning from the war in Afghanistan, who had formed an armed branch of the religious parties, including the now banned Front Islamique Armé. Previously the introduction of religious matters into politics had not been allowed, and it was precisely the introduction of those matters that had brought about the present situation. Algeria was now trying to set matters right by reaffirming the 1989 Constitution. It had held presidential elections with international observers, and they would be followed by parliamentary elections in March 1997 and local elections in June 1997. Thus, progress towards democracy in Algeria was being made rapidly, whereas elsewhere it had taken decades.

37. While his Government was always ready to enter into a dialogue with United Nations human rights bodies, he would have liked more time to discuss with the Algerian authorities the report of Amnesty International which he had received only three days before. The general climate of suspicion in which certain Governments were held by NGOs was not healthy. One-sided reports by NGOs should be treated with caution, whereas well-documented evidence should be considered by all Governments and used for monitoring events and as a basis for improving legislation. It was not correct, for instance, to equate terrorism with armed political opposition groups.

38. Algeria had already made a contribution to the United Nations Voluntary Fund for Victims of Torture. He would inform the Committee of the amount at a later stage.

39. Ms. ILIOPOULOS-STRANGAS asked whether the persons who had become terrorists on returning from the war in Afghanistan had been sent on official mission there by the previous regime. She would also like information about the Islamic Council.

40. Mr. DEMBRI (Algeria) explained that 2,000 to 3,000 out-of-work young people had been recruited by various associations and sent to Afghanistan. Such recruitment had occurred in many other countries, including other Maghreb countries, Egypt, Yemen and countries in sub-Saharan Africa. On their return from Afghanistan the recruits, with their experience of guerrilla warfare, had introduced a disturbing element into Algerian society. They considered that democracy was incompatible with the theocratic State they desired.

41. The Islamic Council was a body that had existed under all Algerian Constitutions. It was composed of doctors of religious law and experts on customary law who advised on draft legislation before Parliament, to ensure that it did not conflict with positive Islamic law.

42. The CHAIRMAN thanked the delegation of Algeria and requested it to reply to the questions put by members at the Committee's next meeting.

43. The delegation of Algeria withdrew.

The meeting was suspended at 12.05 p.m. and resumed at 12.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

44. The CHAIRMAN read out the Committee's programme of work for the second week of the current session. He asked for volunteers to serve as country rapporteur and alternate country rapporteur for the initial report of Cuba.

45. Mr. PIKIS and Mr. ZUPANCIC agreed to perform those duties.

46. The CHAIRMAN said that the following day the Committee would consider the second periodic report of Uruguay and then, in closed session, communications under article 22 of the Convention.

47. Ms. ILIOPOULOS-STRANGAS asked when the Committee would consider information received under article 20 of the Convention.

48. The CHAIRMAN suggested doing so at the same time as communications under article 22.

49. It was so agreed.

50. The CHAIRMAN said that on Wednesday, 20 November, the Committee would consider the second periodic report of Poland. It would then hear Mr. Sorensen's reports on the latest meeting of the Working Group on the Question of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and on the Symposium on Torture in the Middle East and North Africa: Prevention and Treatment Strategies, which he had attended in June 1996 in Athens. Also,

Mr. Gonzalez Poblete and Mr. Sorensen could, if they wished, report on the International Conference on Torture, organized by Amnesty International in October in Stockholm. The Committee would then resume, in closed session, consideration of communications under article 22 of the Convention.

51. On Thursday, 21 November, the Committee would consider the initial report of Georgia. Then, he would report on the work of the Seventh Meeting of Persons Chairing the Human Rights Treaty Bodies. Finally, if necessary, the Committee would discuss measures it would like the secretariat to take in order to improve its working methods and efficiency and thereby ensure better implementation of the Convention.

52. On Friday, 22 November, Mr. Ayala Lasso, the United Nations High Commissioner for Human Rights, was scheduled to addres the Committee at 10 a.m.; as he was currently in New York, his visit still needed to be confirmed.

53. The Committee would then close the seventeenth session, provided that it did not want to meet on Friday afternoon. At 11.30 a.m. a press conference would be held in the Committee's meeting room, and at 12.15 p.m. there would be a demonstration, in room A-502, of the data bank on the Convention created by the University of Minnesota.

54. Mr. YAKOVLEV inquired whether dates had been set for the eighteenth and nineteenth sessions of the Committee.

55. Mr. BRUNI (Secretary of the Committee) informed members that the eighteenth session of the Committee would be held from 28 April to 9 May 1997; the nineteenth session would be held from 10 to 21 November 1997.

The meeting rose at 12.50 p.m.